

**FINAL DRAFT  
ASSESSMENT REPORT  
REFORMING THE MANDATE REIMBURSEMENT PROCESS**

**Prepared for the  
COMMISSION ON STATE MANDATES**

**by**

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*This report is the work product of the authors and represents the exclusive judgment of the Center for Collaborative Policy.*

## **EXECUTIVE SUMMARY**

The mandate reimbursement process, which is essentially the same process that was established twenty years ago, does not timely inform policymakers of the state's liability for mandated costs, nor does it timely reimburse local governments and school districts for the costs they incur. The Commission on State Mandates seeks to streamline and reform the existing process for determining and reimbursing mandates.

Thus, at the request of the Commission on State Mandates, the Center for Collaborative Policy, a unit of the College of Social Studies and Interdisciplinary Studies at California State University Sacramento, carried out an assessment of the feasibility of using a collaborative process to develop recommendations for reform of California's state mandate reimbursement process. The assessment, which was carried out using the best practices for the field, included interviewing a sample of representatives of agencies and organizations most concerned with the state mandate reimbursement process. The data from these interviews was compiled and analyzed by the Center. Based upon this analysis suggestions were prepared for consideration by the Commission and other interested parties.

The Center concludes that a collaborative process to consider recommendations for reform of the state mandates process is feasible if certain process factors are addressed. First, interviewees indicated that such a process should enjoy the support of the Legislature and assurances to participants of such a process that the Legislature would carefully consider any recommendations offered as a result of the process. Second, the interviewees indicated that the Department of Finance should be engaged directly in such a process. Third, the interviewees indicated that such a process should have the benefit of neutral facilitation to guide the deliberations and negotiations. Finally, the interviewees indicated that such a process should have adequate time and resources available to adequately support the deliberations. In particular, many interviewees believed that the period from now till the time to introduce related legislation in early 2007 was most

opportune. In fact, there seemed to be a sense that this might be the only opening for such an effort for some time to come.

There were many valuable suggestions made regarding the issue areas that it would be desirable for a collaborative process to address, and many proposals for reforms offered. Several of these proposals were strongly held by their respective proponents. However, there was a clear willingness among potential stakeholders to consider the suggestions and perspectives of all other stakeholders. In summary, the assessment indicates that the key stakeholders would agree to participate in a collaborative process if certain factors are adequately addressed by that process and that there are issues that could potentially be the subject of productive negotiations.

We conclude by suggesting that the Commission on State Mandates recommend that the Legislature call for a report of consensus recommendations from the Commission in time for consideration by the Legislature during 2007 and provide funds to support a collaborative process to develop those recommendations. If the Legislature agrees with this request, we suggest that the Commission convene a collaborative process made up of stakeholders in mandate reform. We offer suggestions for the purpose of the collaborative process and illustrative goals for outcomes which we believe may be accomplished. Finally, we offer the suggestion that the collaborative process should start with convening and organization and proceed through joint fact finding, negotiations and implementation.

## **TABLE OF CONTENTS**

### **I. INTRODUCTION**

### **II. ASSESSMENT METHODOLOGY**

### **III. RESULTS OF ANALYSIS**

#### **A. The Issues Landscape of the Mandates Process**

#### **B. Areas of Agreement**

#### **C. Major Issue Areas**

#### **D. Proposals for Change**

#### **E. Conditions for Effective Collaboration**

### **IV. CONCLUSION AND SUGGESTIONS**

#### **A. Conditions for a Collaborative Process**

#### **B. Goals**

#### **C. Additional Issues to Consider**

#### **D. Convening and Organizing a Collaborative Process**

## I. INTRODUCTION

The Commission on State Mandates (CSM) convened a workshop on reforming the mandate reimbursement process through its Legislative Subcommittee on December 8, 2005. That workshop followed several years of discussions about various reforms that had been sparked particularly by the release of the 2002 Bureau of State Audits report *School Bus Safety II*, which estimated an annual cost of one mandate at 48 times the level originally estimated by the Legislature. The high cost of many mandates, the fact that such costs had not been anticipated at the time of legislative adoption, the long period of time taken to process test claims under the state system, the backlog of test claims and the size of unpaid debt to local agencies<sup>1</sup> and school districts, variously estimated at between 1 and 2 billion dollars, all created many causes of dissatisfaction and ideas for change. Legislative hearings headed by Assembly Member John Laird in 2003-04 provided an important forum for discussions and resulted in many bills to address specific mandates but not an overall reform statute. By the time of the 2005 workshop, there seemed to be a growing feeling that some forum needed to be created to work on ideas in a systematic way.

Many of the major stakeholders attended the workshop, including CSM Members and staff, and representatives of specific counties, cities and school districts, as well as the SB-90 Service consultants, the California State Association of Counties, the League of California Cities, the Legislative Analyst's Office, the Assembly Budget Committee and the State Controller's Office. A staff summary of the workshop discussion expressed the following conclusions:

1. The mandate process and reimbursement process must take less time.
2. Discussion should be had with the entire Commission regarding whether or not Commission staff should commence meetings to discuss large-scale mandate reform.

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<sup>1</sup> Throughout this study we will use the terms "local agency" and "local government" as defined in the Government Code relating to the Commission on State Mandates (see GC 17518). "Local agency" refers to cities, counties and special districts while "local governments" is the broader term embracing school districts as well.

3. Staff with Department of Finance, the State Controller's Office, the Legislature, the Commission, and cities, counties, and school districts must be present at these meetings and authorized to make decisions for them to be successful.
4. There must be give and take in negotiating a new process. Participants should be willing to compromise.
5. Revisions to the existing process may be necessary in some cases. For example, while discussions are ongoing regarding large-scale reform, we still have 103 incorrect reduction claims on file that we need to address. However, there was no agreement on what type of changes should be made to the IRC process.

After hearing the report of the workshop, Commission Chair Anne Sheehan proposed exploring the use of an independent facilitator as a possible way to assist key stakeholders as they consider ideas for potential reform of the mandates process. The Commission then authorized staff to prepare a proposal for using a facilitator for mandate reform discussions.

CSM staff invited the Center for Collaborative Policy (CCP), a state agency that is a unit of California State University, Sacramento, to discuss the possible use of a collaborative process. CCP has been assessing and implementing collaborative processes on behalf of public agencies in California for over ten years, in furtherance of its public service role. CCP also supports academic programs and research projects as a unit of California State University Sacramento. CCP's mission is to build the capacity of government agencies, stakeholders and the public to use collaborative methods to improve public policy outcomes. An important step in meeting that mission is to assess each policy context carefully to ensure that collaborative methods are appropriate and to explore possible process design options for that particular set of circumstances. The Commission staff and CCP concluded that such an assessment was warranted regarding the state mandates process and negotiated an interagency agreement to complete an assessment and report to the Commission at its March 29, 2006 meeting regarding CCP's findings and recommendations.

## II. ASSESSMENT METHODOLOGY

The Center for Collaborative Policy adheres to best practices for the field in the preparation of collaborative process assessment reports. A collaborative process for public policy issues uses consensus-driven dialogue, assisted by a professional facilitator or mediator, to reach a decision or formulate a policy, recommendation, plan or agreement involving all affected stakeholders as well as those necessary for the agreement's implementation. What sets such a process apart from many others is its typical emphasis on participants' taking the time to explain what lies behind the positions they take, to listen to the needs and interests of other stakeholders and to seek solutions that meet as many of those interests as possible. Participating means more than claiming as much as you can for your side; it means considering what the needs are for all concerned. The reason for this is simple. The situations requiring collaborative solutions are precisely those that cannot be solved by one side alone. They require agreement among the affected parties in order to secure implementation of an agreement benefiting all parties, because solutions cannot be achieved in any other way.

The conditions for initiating and sustaining a collaborative process include such elements as:

1. Incentives. The status quo is sufficiently costly to all stakeholders that they share an incentive to want to change it.
2. Willingness to Negotiate. The key stakeholders are all willing and able to participate in the process and make a good faith effort to reach agreement.
3. Authority to Negotiate. Stakeholders can represent to each other the degree of negotiating authority they bring to the table and be completely transparent about the circumstances under which they must seek approval from higher level officials, boards or constituencies.
4. Mutual Understanding. The stakeholders recognize the legitimacy of one another's goals and needs and are willing to consider innovative proposals to meet those needs.
5. Possibilities for Joint Gains. Opportunities exist for simultaneously meeting the needs of the stakeholders through joint support for new approaches.
6. Central Process. The collaborative has the potential to be the central process for dealing with the issue and will not be overshadowed by other events or processes that might displace it.

7. Involvement of Decision Makers. The agencies needed to implement an agreement are part of the process and willing to guide it through whatever administrative or legislative steps that might be necessary.
8. Availability of Resources. Adequate resources are available to see the process through to its conclusion.
9. Political Limits. The political atmosphere for the stakeholders is such that they would be rewarded rather than punished for reaching voluntary agreement about the issues at hand, and/or it would be more advantageous to have some control over the terms of agreement rather than being forced into action by a court, or other process beyond their control.

The assessment methodology is largely directed to determining the presence or absence of these conditions rather than attempting to reach a conclusion about potential success of an outcome or the possible outlines of a substantive agreement. In addition, the assessment seeks to identify the key issues that might enjoy the best prospects for successful collaboration, key stakeholders that might be engaged, and suggestions for organizing a collaborative process that appear to be most likely to be productive.

This assessment consisted of three steps. First CCP worked with the staff of the Commission to identify organizations to be interviewed, to review written materials about previous efforts regarding mandate reform, to review written material about current mandate reimbursement claims processing, and to review written materials about previous proposals for mandate reform. We then worked with the Commission staff to prepare an interview protocol. Anne Sheehan, Commission Chair, sent a letter to the identified organizations seeking their participation in the interview. We received 100 percent cooperation as a result of this letter.

More than 40 individuals representing 25 organizations, departments and offices were interviewed, some in small groups, some by telephone. We recognized that many more organizations have an interest in mandate reform than resources and time permitted us to interview. Therefore we attempted to identify a cross section of interviewees that would fairly represent the wide range of perspectives. In addition, we asked each person interviewed about their views on other stakeholders important to reaching agreement. If other stakeholders were suggested that we believed might bring an additional perspective, we added them to the list. Additional potential stakeholders were included as a result.



Further, the Commission staff organized a public meeting of interested parties for March 28, 2006, to give us an opportunity to hear suggestions for this report and to identify any additional perspectives that may have been missed by the prior interviews. Attachment 1 lists the organizations and agencies interviewed.

We reviewed numerous written documents regarding the existing mandate determination and reimbursement process, legal decisions, previous efforts to achieve reforms, and previous recommendations for reforms. Attachment 2 outlines the existing mandates process we used in preparing the assessment.

In the second step of the assessment we scheduled and carried out interviews in February and early March, using the protocol in Attachment 3 as a guide to the interview. We modified the protocol as appropriate for the specific individuals and to adapt to the directions of their respective comments. In keeping with best practice for the field, we assured every interviewee that we would maintain the confidentiality of their responses. No one other than the report's authors have access to the content of the interviews. In addition, we met with the staff of the Commission to seek clarifications of several points regarding the mandates process and their perspectives regarding this process.

In step three we compiled and analyzed the data provided from the interviews. Using this data we developed our perspectives regarding the issues most likely to be amenable to a collaborative process, compared our analysis with the conditions for a collaborative process, and formulated suggestions for an effective collaboration.

Finally, based upon this analysis we drafted a written report and reviewed it with the Commission staff to obtain their suggestions and clarifications. A subsequent draft report was made accessible at the Commission's web site, and, following the March 28th meeting of interested parties to obtain additional input, we then presented the draft report to the Commission at its meeting on March 29, 2006. Final revisions were made to the report following the Commission meeting based upon a review of all the additional

information we received during these meetings and from communications we received as a result of these meetings.

We are grateful for the assistance of all the interviewees, the Commission staff, and to everyone who offered us comments regarding the assessment. However, this report is the work product of the authors and represents the exclusive judgment of the Center for Collaborative Policy.

### **III. RESULTS OF THE ANALYSIS.**

#### **A. The Issues Landscape of the Mandates Process.**

The first task in analysis was to discern the broad groupings of issue areas of greatest concern to the stakeholders and to organize the responses. The format immediately suggested by the flow of almost every conversation related to the stages of the mandates process itself. The ideas for change also fell into two further broad categories as to whether they represented adaptations of the current system or fundamentally new approaches. Lastly, of course, we could organize responses by general interest group. Given the complexity of the mandate reimbursement process, the volume of identified issues and diversity of responses, we decided to produce a greatly simplified matrix or issues map.

The issues map appears as Attachment 4 to this report.

#### **B. Basic Areas of Agreement.**

Our research found a high level of agreement among those we talked with about several key goals in seeking reform of the state mandates process.

First, there was wide support for the constitutional principle that if the state requires a local government to carry out a function, the state should pay for those new costs. Further, most believed there was nothing inherently adversarial in following that principle, though many felt that the complex process for filing claims seemed to accentuate the tensions between state and local interests.

Second, there was general agreement that the process and/or information available to the Legislature for their deliberation on proposed new mandates could be improved significantly. Although there was some support for requiring the Legislature to include the appropriation for a new mandate in the legislation enacting that mandate, there was also sufficient enough opposition to this concept to suggest this is not a fruitful area for a collaborative process at this time.

Third, just about everyone believed the mandate determination and reimbursement process could and should take place in a much shorter period of time. There were a wide range of ideas about how this could be accomplished. We conclude that this is potentially one of the more productive areas of consideration in a collaborative process.

Fourth, most of those we interviewed thought the timing was right to consider major changes to the process and that minor changes to the existing process, though worthwhile, would hold much less promise of significant savings in time and resources. There seemed to be a sense that if reforms could not be formulated in time for consideration by the Legislature and Governor next year, the prospects probably would disappear for some time to come. Many interviewees from both state agencies and local governments pointed to the key role of Assembly Member Laird in championing reforms during this period.

On the negative side, there was also a lot of agreement that the level of mistrust and suspicion between state and local interests had gotten steadily worse over the years. No one blamed the mandates process uniquely for that problem, but all felt it contributed to it.

Many also believed that continuing the process in its present form without change could result in the sort of crisis that led to the creation of the Commission in the 1980s, a potential for even more costly litigation, and a continuing increase of liability for state government. There was general agreement that continuing the process would increase processing costs for both state agencies and local governments, and there was a general sense that reducing the inefficiencies of the adversarial process would free up more tax dollars for public service provision.

### **C. Major Issue Areas.**

#### **1. The Time, Complexity and Cost of the Process.**

The principal issue of the length of time consumed in the process of hearing and resolving the various stages of a test claim had many explanations, depending on one's point of view, but all shared the same conclusion: it simply should not take this long. Some speaking from a state perspective, for example, might point to local advocates as trying to create mandates where none existed, and some, speaking from a local perspective, might complain about being forced to prove that what is clearly a mandate really is a mandate. Each blames the other for extending the process, but at the same time blames the process as unnecessarily putting them into these positions to argue against each other in legalistic terms and prove everything from the ground up.

Some commented that the complexity had spawned a "cottage industry" that was likely to defend the status quo. On the other hand local entities defended their consultants as critical in getting satisfactory outcomes. The consultants we interviewed argued in favor of making the present system faster, less complex, and less costly. "I'd still be an attorney even if there were no test claims to prove," said one. There were assertions from state agencies and local governments about the role of the consultants in increasing the costs and complexity of the process, one side blaming the consultants, the other side blaming

the convoluted process itself and/or the inferred intentions of the state to use the complexity of the process to reduce pressure on the state budget.

Some of the local entities have become so frustrated with the system that they have come to think of it as designed to delay payments virtually forever. Many in the state attribute the delays to locals and also say that if local entities weren't pushing the envelope on the costs they claim the process would not take so long.

There were several examples of practices that were perceived to add to the complexity and delay. For example, such issues as legislative reconsideration of mandates and the addition of new Commission responsibilities, such as the SB 1033 process, are perceived to dominate Commission time, delaying the determination of test claims. Processes for smaller test claims are perceived to take an inordinate amount of time, also delaying attention for more complex test claims. Likewise, many locals attributed much of the delay to the perceived lengthy time that the Department of Finance took for their reviews.

These comments and many like them point to rising levels of frustration on both sides and seem to indicate that the longer the present system continues the more prevalent the blaming and finger-pointing will become as a method of explaining what is happening. If a collaborative process is convened, one of the first tasks will need to be to create an opportunity for the stakeholders to better understand each other's points of view on these issues. We concluded that there is an opportunity for a collaborative process to negotiate changes to practices that may be delaying the process and adding to its complexity.

## 2. Lateness in Funding and the Growing State Liability.

The Legislative Analyst's Report on the Governor's 2006-2007 Budget reports "a backlog" of at least \$1.1 billion in unpaid non-education mandate claims and \$1.2 billion in unpaid education mandate claims but indicates that these totals are uncertain and subject to further tallying by the State Controller's Office.

In the view of many local governments and their representatives, payment of the mandates represented by this liability is the highest priority. The funds represent reimbursement for services already rendered at the direction of the state. In the view of the local entities, especially cities and counties, this delay becomes another sensitive revenue problem alongside other revenue issues of recent years that have arisen in the context of various state budget crises and reduced spending discretion of local government. On the other hand, for many at the state level the critical priority is to get control of the mandates process to prevent further increases in this deficit and the liability it represents for the state. From this perspective, once the system is reformed as it relates to future mandates, the opportunities to address the existing debt will be enhanced. In our view both issues would require consideration in a collaborative process, but there is the possibility of linking reforms for prospective reforms to measures that speed up resolution and payment of prior year reimbursement claims.

### 3. The Legislative Process of Creating the Mandates.

There was a wide spread view among all types of stakeholders that review of bills with mandates by the Legislature was a significant element of the dysfunction of the current system. They all said something like this comment of one interviewee: “Surely a way could be found to make it clearer up front what the costs of these things would be, even before the bill gets signed.”

Many suggested bringing back the type of fiscal analysis they recalled once had been done by the Department of Finance and the Legislative Analyst’s Office. This included an estimate of mandate costs based on interviews with selected local governments or sample surveys. Some suggested ensuring that Committee hearings included testimony by local entities and the appropriate state agencies regarding the expected procedures and costs of the proposed mandate. Some suggested examining a range of additional options for addressing a public policy problem, such as turning the idea into a grant program if the cost is too high or starting with pilot projects to establish costs and then creating a

cost template based on that experience. Others suggested some version of a unit cost or cost matrix approach.

The concept was to simplify the later mandate determination and reimbursement process by making it much clearer up front which mandates existed in the legislation and to establish their cost guidelines. The Commission process would then be a secondary tool for the relatively few programs that posed special issues or exceptions to established rules.

We concluded that this is an issue that would warrant consideration by stakeholders in a collaborative approach. Since proposals in this area of reform especially relate to the procedures of the Legislature, it would be particularly important to include legislative leaders in discussions of options for change.

#### 4. Establishing the Costs of Mandates.

The responses included numerous ideas about alternative ways to establish the costs of mandates in place of the current system of Parameters and Guidelines (P's and G's) as well as specific suggestions for improving the P's & G's system. The Department of Finance has put forward a Budget Change Proposal for the 2006-07 Budget that would create a Mandates unit. Among other duties envisioned for that unit, its staff would develop cost estimating methodologies to identify local activities for inclusion or exclusion and thus serve as fiscal limits for mandates that could be written into enabling legislation or proposed regulations, well in advance of the mandate determination and reimbursement process. Another Finance proposal discussed further below envisions a negotiated cost determination in the context of a shortened Commission process. A proposal of the Education Mandates Cost Network of two years ago proposed combining the Commission steps of determination of a mandate and the cost structure, instead of having a separate P's and G's process. That process envisions adding a fiscal staff to the CSM to prepare a rigorous analysis using, where appropriate, a unit rate model. Another

concept from local government is the idea of submitting estimated costs for mandate implementation within a year of enactment. At the close of some established time frame, there could be a settle-up process to accommodate differences between actual allowable expenses and the amount already paid out. This is a sample of ideas among stakeholders on different ways to shorten the process of calculating the estimated costs for reimbursement of mandates. As with many other issues, we found a widespread willingness to consider new approaches.

## 5. The Audits.

The audit process carried out by the State Controller's Office was frequently commented on, especially by representatives of local agencies and school districts. The gulf in perception between state agencies and local governments was never wider than in the descriptions of the purpose, process, and impact of audits of mandate reimbursement claims.

To the state agencies most deeply involved in the process of paying the reimbursement claims, the audits appear as a normal and reasonable tool for testing the accuracy of the Parameters and Guidelines process and ensuring that there are effective controls and accountability for this unique form of state expenditure. They point to the fact that audits are especially necessary since mandates are the only state program where costs are determined under locally proposed Parameters and Guidelines (though contested before and finally approved by the Commission). The fact that many audits have proposed steep reduction rates is an indicator to some state agencies that the envelope of acceptable expenditures is being pushed. State agencies argue that there is nothing unusual in the types of documentation required, that these standards are provided by the Controller's Office along with the Parameters and Guidelines, and that the Controller's Office is willing to discuss alternative forms of documentation with local entities. The concern is that the incentive in the current system is for local entities to inflate reimbursement claims, making audits all the more important.



From the local perspective, however, all this looks completely different. Some of them point to the fact that recent budget estimates to the Legislature of projected payments owed on mandates are now incorporating significant reductions to reflect the impact of audits. From this perspective, that is not a reflection of reality but a target for auditors to hit, thus motivating them to find reductions. Auditors in the field, it is reported, vary widely in the standards they use, seemingly following no fixed guidelines, and are often inflexible. Some auditors are excellent, but some insist, it is reported, on rigid compliance with detailed documentation requirements that are impossible for a school district or county to produce, even though the local entity believes it has ample evidence to show that the mandated service was provided. There are many more specific audit issues that have been raised, but the general picture painted from this perspective is of a process that ignores substantive accomplishment and focuses narrowly on detail of documentation that often cannot be produced many years after the original service was provided. Moreover local entities feel they are in a “catch 22” as it relates to audits. According to them, claims take two or more years to process. Without a decision and Parameters and Guidelines, locals don’t know what documentation the state will require for audits and hence what records to keep. When the auditors determine they did not keep the correct records the claim is then dismissed.

There is a significant gap between state agencies and local governments in their respective perceptions of the audit of reimbursement claims. Although we did not attempt to validate any of the assertions made regarding the audit procedures, we concluded that this is a ripe issue for a collaborative process where improved communications alone may result in changes that could be beneficial to both state agencies and local governments.

#### 6. The Structure of the Mandate Determination Process.

There were many comments about the structure of the mandate determination process, including the composition of the Commission on State Mandates. There was a pervasive sense on the part of local governments that the structure of the mandate determination

process is biased toward the state and that the Commission is aggressive in challenging local entities rather than acting as a balanced adjudicatory body. Many expressed the perception that they, as local government representatives, are not accorded the respect they deserve as representatives of citizens. Many argued that state agencies with substantive responsibilities in the policy area of specific mandates did not actively participate in deliberations regarding test claims related to that policy area. They saw the staff of the Commission as trying to fill both the oversight role of these state agencies and the role of a staff to an adjudicatory body. As a result they feel they have no alternative but to hire consultants and attorneys to be sure their test claims receive the attention they deserve. They also perceive a built-in conflict in the composition of the Commission as dominated by state officials. Their reasoning is that state officials have an interest in conserving state resources, and so they cannot be impartial in the determination of test claims. In sum, local governments see the structure as one more manifestation of a process that works primarily to delay and deny them funding for providing services pursuant to state mandates.

At the state level we found two opposing perspectives. Some think the Commission and the staff do the best they can to be fair and impartial as required by the law. Others believe the Commission often leans too far to accommodate local government test claims. They believe this happens because sometimes Constitutional Officers on the Commission are anxious to cultivate electoral support, and at other times state analysts can be overwhelmed by expert consultants and attorneys employed by local governments.

Many we spoke with, however, saw members of the Commission as genuinely attempting to listen closely to each side in the cases before them. The Commission staff was praised by some as being capable in carrying out their work, however sharply some might disagree with the way they defined their roles. We were told by local government representatives that it is the structure of the process, not the competence of the Commission or staff, that is the issue. Some believe that the process with the existing structure would benefit if the staff had more programmatic expertise or if additional staff with fiscal expertise joined the legally oriented unit.

In summary, we could not find a consensus about the importance of changing the composition of the Commission, much less about what the change would entail. We did find that if other concerns related to the complexity, timeliness, and adversarial nature of the process could be addressed, concerns about the structure might be less important. To the extent most test claims are managed in a timely and collegial manner, the Commission's determination of fewer more complex test claims may be more manageable. In addition, it is possible a collaborative process could surface up proposals for the change of the structure that might more clearly delineate roles among state agencies that present critical assessments of test claims and the role of the Commission staff to support an adjudicatory function of the Commission.

#### 7. Review of Specific Mandates.

Many of the interviewees brought up review of existing specific mandates. In the past there have been many proposals regarding suspending, deferring, and eliminating specific mandates. We did not have the time or resources to interview the beneficiaries of the various mandates. In addition it is clear from past reform efforts that suspending or eliminating many of these mandates is very controversial. Therefore consideration of this issue in a collaborative process would require representatives to speak for the beneficiaries of each of the mandates considered. We found general agreement among those we met with that reforms to the process are more important at this time than consideration of specific mandates. We concluded that taking up this issue would detract from deliberation regarding fundamental reforms and that the complexity of addressing both fundamental reforms and review of specific mandates would likely render a collaborative process infeasible. This issue is probably most appropriate for the legislative process.

#### **D. Ideas for Major Changes to the Process.**

As part of our analysis we reviewed ideas which have been put forth recently about changes to the mandates process. We wanted to consider whether in these ideas there are potential threads that indicate how a potential collaborative process might approach the deliberation regarding changes. In particular we wanted to try to gauge whether the range of ideas offered the potential for stakeholders to productively discuss each others' ideas. Many groups have come forward with ideas and proposals for changing the mandates process in recent years to respond to the level of frustration and distrust that we encountered from stakeholders during the interviews. In addition we heard many ideas from our interviews. These range from highly specific modifications of present practices to sweeping proposals for altogether new approaches to dealing with the creation of mandates as well as the resolution of test claims.

Space does not allow presenting all these ideas here. However we have attempted to summarize four sets of ideas for significant change in the mandates process that we believe originate from four major perspectives: local agencies, school districts, the Legislative Analyst's Office and the Department of Finance. We believe these ideas do indicate an adequate level of potential convergence to infer that there is much room for stakeholders to discuss and refine their respective ideas.

##### **1. Local Agencies' Ideas for Change (2006).**

- There should be a mandate cost review committee composed of appropriate state and local representatives who can review bills and provide information about what proposed mandates entail while the measures are still in the legislative process.
- If adequate work is done at the time of bill passage regarding the existence and cost of each mandate, there should be a neutral body that local agencies can appear before to claim reimbursement for a new mandate without going through the test claim process. The Commission could be the arbiter for additional test

claims that were not evident in legislation or that arose because of executive action.

- Within one year of enactment (or less) local agencies should be able to submit estimates for their costs to implement a mandate. Then at the close of the year or some other established time frame, there could be a “settle-up” process to accommodate the differences between actual allowable expenses and the amount already paid out. There should be allowances for cost differences between agencies for the same services.
- Expediting the process would provide better oversight for the Legislature and Administration, as they would realize the costs attached to legislation earlier. It would also reduce friction between local governments and the State.

## 2. School Districts Ideas for Change (June 2004)

This summary is drawn from an Education Mandate Cost Network proposal presented to the Assembly Special Committee on State Mandates on June 17, 2004. The proposal was created two years ago in response to then-existing conditions and is summarized here in digest form only for illustrative purposes. It is not intended to represent the current thinking of the Education Mandate Cost Network.

*Recast the membership of the Commission on State Mandates to better reflect the parties of interest that come before the commission (i.e. add members that would represent cities, counties, school districts, community college districts, and special districts). A more balanced membership [than the present one dominated by representatives of state agencies] will ensure that all perspectives are weighed equally before decisions are rendered.*

*Require the Commission on State Mandates to establish terms for reimbursement upon finding of a state mandate. The Commission should adopt the terms, conditions and rate of reimbursement upon adoption of a Statement of Decision that a reimbursable mandate exists. Every effort should be made to link the finding of a mandate with an accurate*

measure of its costs. We would recommend that a new unit be added to CSM staff to provide objective fiscal analyses.

*Utilize uniform “unit rates” for reimbursement of mandated services and activities.*

Instead of using the current system based on “Parameters and Guidelines,” the CSM should instead, where appropriate, reimburse school districts and other local agencies at a uniform rate based on the output or specific service unit required in the mandate. This would eliminate the wide variation in reimbursement claims and non-uniform service or program levels across the local jurisdictions. Unit rate funding will also promote the efficient delivery of services, as school districts strive to meet the requirements of the new law within the resources provided.

*Upon the conclusion of a review of state mandates by a newly established joint legislative committee, transfer funding from an annual appropriation to the State Mandate*

*Apportionment System.* Use of this existing system to fund current mandates will expedite the funding process and eliminate the need for local entities to file detailed cost claims. This system, working in conjunction with a unit cost reimbursement methodology, will provide greater certainty to local entities that their costs will be funded and more refined statewide cost estimates for Legislators who must set priorities for General Fund expenditures.

*Provide budget appropriation for the year immediately following the finding of a reimbursable mandate.* By acknowledging that school districts incur costs as soon as they begin to provide new services, the state will minimize the budgetary encroachment that would otherwise occur if state reimbursement is delayed.

*Refocus the audit process on the provision of the service, not the documentation of the costs incurred in providing the service.*

### 3. Legislative Analyst's Office Ideas (January 2006).

In its *Analysis of the 2006-07 Budget Bill*, the Legislative Analyst's Office (LAO) sets forth a proposal for streamlining and simplifying the financing of K-12 education mandates. It would replace the current system of reimbursing all 39 K-12 mandates through the individual reimbursement claims process with an Education Mandates Block Grant Program. The block grants would establish a set per pupil amount to cover costs of the mandates, but because the Constitution requires reimbursement of actual costs each district would have the alternative of accepting the block grant or going through the existing reimbursement procedure.

The LAO offers this recommendation in its belief that mandates are simply no way to manage a state program. Under the mandates process, it says, the state loses control of the cost of the program, the distribution of funds and the priorities of spending. Under a categorical program, the state would determine the areas of greatest need, select the recipients and decide what the allowable costs would be. The current mandate determination process takes more than five years to approve a new mandate, and during that time local districts must incur costs to fulfill the mandate while they can only guess which of these costs might ultimately prove to be reimbursable. Small districts, the LAO points out, often fail to apply for reimbursement for most mandates since they lack the staff and resources to meet the requirements of the process. The LAO also points to the friction caused between the state and local districts by the auditing process that we have discussed above.

The LAO proposal, if fully implemented, would result in a \$24-27 per pupil mandate reimbursement and would prevent districts from having to invest resources in determining the cost of each mandate. By accepting the block grant, a district would waive its right to seek a reimbursement claim for individual mandates but would also no longer be concerned about audits. It would be subject to periodic review to ensure that the mandated activities were being carried out. If the district elected to continue filing reimbursement claims, it would still be subject to audits.

While this proposal goes to the latter part of the process rather than the front end, as most of our interviewees did, it has similar goals of reducing time, complexity and cost and giving both the state agencies and local governments more predictability and control over funds.

#### 4. Department of Finance Ideas (March 2006).

- Go back to the origins of SB 90 as modified by Proposition 1A and the basic principle of doing the right thing: “If you make us do it, you have to pay us, and if you don’t pay us, we don’t do it.” At least as it relates to non-education mandates, Proposition 1A requires either reimbursement of the costs or suspension of the mandate.
- Speed in determining mandate costs is more important than perfect accuracy. If local governments prevail in showing that the real cost is \$20 million, for example, instead of \$1 million, then the state has to choose between funding at the higher level, and suspending.
- Because of the differences between education and non-education mandates, this new approach should be worked out first for non-education mandates only and then the approach worked out for the education system adapting from the approach for non-education mandates.
- The initial determination of the existence of a new mandate could still be done by the Commission on State Mandates but in a less legalistic manner and at a faster pace. The initial determination should be made within the year after the enactment of the mandate, and the amount for reimbursement included in the budget for the subsequent year. If the Legislature does not fund the mandate then the mandate would be automatically suspended under Proposition 1A. Alternatively the Legislature could consider changing the law.
- The biggest problem with the current system in this context is that it requires a local entity to file a test claim before costs are determined. This leads to the potential that the state would build up a substantial debt before the question of



suspension is even raised. It also guarantees that the process will be adversarial and legalistic, which is a major cause of workload and backlog.

- To establish the initial determination, there could be a negotiated method used to establish costs quickly instead of the current process of Parameters and Guidelines under the CSM. As soon as the new mandate is established, a negotiating committee can be established consisting of representatives from Finance and local governments to establish a rough estimate that would include recognition of regional differences in costs. There would need to be a speedy method of resolution in case of disputes between the state and locals. CSAC and the League of Cities and other local government representatives could have standing committees to advise on negotiated mandate cost estimates.
- We would need a new law to establish that the cost of a mandate is the cost negotiated between the Department of Finance and local representatives, and then endorsed by the Commission on State Mandates.
- There would also need to be an option available to any local government that objected to the negotiated cost rate.
- The use of unit cost rates could be important for speedy determination thru the negotiation process. After a year of experience, you could revisit and correct the formula on the basis of real-world data. If the cost got to be too high, once again 1A might kick in and lead to suspension if the Legislature balked. Or the local governments could continue to enforce the mandate with less money, but the state would owe the balance.
- The Legislature should monitor any collaborative process to develop recommendations for mandate reforms. For example, Assemblyman Laird could help kick it off and then send staff to monitor the process.

## 5. Implications for a Collaborative Process

There is clearly a wide variance among these and other ideas. We conclude from our review of them, however, that there is room for stakeholders to use many of the concepts as starting points to begin deliberation about how to formulate consensus recommendations for reforming the mandates process. In the next section we offer an option to begin such a deliberation. This option is shaped partially by the feedback we received from everyone that the Department of Finance must be engaged in deliberations in order for them to be productive, and partially by the feedback we received from the Department that they are willing to explore variations of their ideas. Therefore we think a useful place to begin may be the ideas offered by the Department of Finance.

### **E. The Conditions for Effective Collaboration.**

The data gathered in this assessment allow us to evaluate the conditions our research disclosed against the needed conditions for collaboration set out earlier in this report. On balance, it is our opinion that these conditions have been met to a degree that lays the groundwork for a collaborative process, but there are at least two conditions that must be answered by future events, those relating to the availability of resources and to the support of the Legislature for a collaborative process.

*1. Incentives. The status quo is sufficiently costly to all stakeholders that they share an incentive to want to change it.*

Most of the issues discussion has demonstrated a high level of frustration on the part of all stakeholders with the cost, delays and huge accumulated debt developed under the current system. The incentives seem strong for most of the parties. The local agencies and school districts are under a lot of financial strain and want to be paid promptly when they are required to provide new or higher levels of service under state mandates. When they are not paid promptly, they must provide the service and take resources away from some

other activity to do so since their overall ability to raise revenue is restricted. The current system also requires them to incur high costs for consultants and attorneys to file cases, sometimes to go to court. The state agencies involved most directly in the process (Finance and State Controller) are responsible for protecting the state's budget and fiscal integrity and are trying to find ways to make the process more efficient and less costly. The mandates work load adds to existing responsibility, and they want to get control over that burden as well as the costs and time-consuming nature of the process. The Governor and Legislature are faced with a multi-billion dollar debt that has to be paid off in a 15 year period under Proposition 1A, at least in so far as non-education and non-workers rights mandates are concerned, and it is in their interest to get rid of that debt and see that it does not return.

There are also potential disincentives from the state perspective. Delay in paying for mandates may be helpful in securing passage of bills. Delay in paying off reimbursement claims may be helpful for the state's budget since this represents a relatively low-interest loan. (Interest is not paid at all until the CSM finds that a mandate exists, and then the interest rate is the "pooling" rate, usually below a commercial rate.) However, all of the state agency representatives we interviewed were insistent that reform of the mandates process is a high priority.

Many of our interviewees believe there is a further institutional disincentive in the inertia of the way the Legislature operates. There is little political constituency behind reforming the existing mandates process, and every member of the Legislature has higher priorities. There is unanimous agreement that the Legislature must indicate its support for a collaborative process in order for it to be productive. We did find indications of this support in the Legislature, but these indications will need to be more explicit to attract stakeholder commitment to a collaborative process.

*2. Willingness to Negotiate. The key stakeholders are all willing and able to participate in the process and make a good faith effort to reach agreement.*

Those we interviewed all indicated their desire to participate but made clear from the outset that a new process could not succeed without the active involvement of the Department of Finance and the support of the Legislature. The Department of Finance was explicit that it would actively engage in a collaborative process if it addresses their ideas for change. In addition key stakeholders insisted the process must be guided by a neutral facilitator with knowledge of the mandate process.

*3. Authority to Negotiate. Stakeholders can represent to each other the degree of negotiating authority they bring to the table and be completely transparent about the circumstances under which they must seek approval from higher level officials, boards or constituencies.*

The stakeholders in this situation are all highly experienced and sophisticated negotiators and, for the most part, have been dealing with each other for years. There will be full disclosure up front about negotiating authority, and everyone we have interviewed is alert to the necessity of this step.

*4. Mutual Understanding. The stakeholders recognize the legitimacy of one another's goals and needs and are willing to consider innovative proposals to meet those needs.*

This is the collaborative step, and we found few stakeholders with practical experience of this type of process. What we did find in abundance were the prerequisites for collaboration. Many of the staff and advocates had worked for different interests over long careers in this field, had taken many different chairs around the same table and therefore fully understood the interests of groups they might now be opposing in a particular case. Many of them are also skilled coalition builders who negotiate and find allies appropriate to each issue. State appointed officials and state legislators, in some cases, once represented local school districts, counties or city government. A representative of school districts once sat on the Commission on State Mandates. There are many with a depth and range of experience that enables them to understand perfectly the needs and goals of every agency represented around the table. Since the incentives

have already been prompting them to think about potential changes of similar types, collaborating on developing these proposals could be a significant next step.

Many of those interviewed did have experience with the use of independent facilitators, and several believed that the process should be guided by someone with no vested interest in the outcome. One spoke of the need for a technically competent facilitator, well-enough grounded in the issues to skillfully guide discussions. Another thought an independent voice would be needed to keep the stakeholders from repeating the same old positions to each other. Some, though, were skeptical that an independent facilitator using the collaborative paradigm would be as effective as a study process convened by the Legislature and overseen by the entities the Legislature is more accustomed to, such as the LAO or a combination of groups, including the Commission.

*5. Possibilities for Joint Gains. Opportunities exist for simultaneously meeting the needs of the stakeholders through joint support for new approaches.*

Quite apart from the willingness to collaborate, we look for objective opportunities to link proposal elements in ways that meet the differing needs of stakeholders in a single package that all can support. In this case, what we find is not a broad mix of disparate elements that can be linked in a complex agreement but rather a narrow focus on a single process with a coincidence of interests in saving time, money, workload and making service delivery as efficient as possible.

*6. Central Process. The collaborative has the potential to be the central process for dealing with the issue and will not be overshadowed by other events or processes that might displace it.*

Although a number of lawsuits are pending and more may be filed, a potential collaborative process convened by the Commission with all the major stakeholders would be a key forum for building widely supported new proposals. Currently, neither the Legislature nor the Governor has initiated any other process that might supersede this one.

*7. Involvement of Decision Makers. The agencies needed to implement an agreement are part of the process and willing to guide it through whatever administrative or legislative steps that might be necessary.*

As noted above, the Department of Finance and the Legislature are major decision makers. In addition, the State Controller's Office is a major decision maker regarding audits. Finally, the Commission on State Mandates is a key decision maker. Both the Department of Finance and the Controller's office have indicated their willingness to participate in a collaborative process as has the Commission. In the past the Legislature has indicated an interest in reforms to the mandates process as evidenced, for example, by the active leadership of Assembly Member John Laird, Chair of the Budget Committee and former Chair of the Assembly Select Committee on State Mandates. It is reported that Assembly member Laird is supportive of a collaborative process. Everyone we talked with indicated his leadership is critical for favorable consideration by the Legislature of any recommendations that are formulated by a collaborative process.

*8. Availability of Resources. Adequate resources are available to see the process through to its conclusion.*

The Commission on State Mandates staff has indicated that it currently lacks the resources to support an independently facilitated collaborative process. A key indicator for stakeholders of support of the Legislature for a collaborative process would be appropriation of funds for this with language calling for the recommendation of the process to be reported to the Legislature by a date certain.

*9. Political Incentives. The political atmosphere for the stakeholders is such that they would be rewarded rather than punished for reaching voluntary agreement about the issues at hand, and/or it would be more advantageous to have some control.*

We found no evidence in our research that the political atmosphere is such that the stakeholders or agencies likely to be involved perceived that reaching a voluntary agreement would be disadvantageous. On the contrary, this issue represents such a source of frustration and conflict for all parties involved that there are likely significant political rewards to everyone if fundamental reforms can be achieved.

On balance, then, it is our conclusion that conditions are conducive to going to the next step for a collaborative process of presenting to the Commission on State Mandates and the stakeholders themselves specific suggestions on how a process might get underway. The critical caveat to this conclusion is that before a collaborative process is convened there must be adequate indication to stakeholders that the Legislature supports such a process and will carefully consider any recommendations it produces. In the next section, we make these suggestions, many of them built around an initial working proposal offered by the Director of Finance.

#### **IV. CONCLUSION AND SUGGESTIONS**

##### **A. Conditions for a Collaborative Process.**

We conclude from our research that the conditions are favorable for a collaborative process to address reform of the state mandates process if two additional issues are addressed. First sufficient resources must be made available to support such a process. Second, the Legislature must indicate its support for such a process and its willingness to carefully consider the recommendations of the process. These issues could be addressed if the Legislature appropriates funds for a collaborative process, indicates the purpose for the process, and specifies a date certain to report consensus recommendations back to the Legislature. We suggest that the purpose is to propose recommendations for fundamental reform of the state mandates process. In order for the Legislature to have time to consider the recommendations in the next Legislative year, we suggest that the date for the report be no later than March 1, 2007.

## B. Goals.

While there may be a number of potential goals for mandate reform to be sought from a collaborative process, we conclude from the assessment that the following seven goals may be a good place to start. They are intended to recognize the level of frustration with the current system and the commitment that is required to launch an effective effort at change, by illustrating potential accomplishments of reform.

- 1. The process should be significantly streamlined and the time for determining test claims and processing reimbursement claims significantly reduced to a fixed period with a system of incentives and penalties.*
- 2. A new system should be designed for prospective mandate determinations.*
- 3. The existing process should be revised to reduce the time required to process existing test claims, and should result in the payment of the state's existing mandate liability as soon as feasible. Then the existing process for determining the cost of claims should be phased out and/or integrated with the new system.*
- 4. Better and timelier information should be made available to decision makers about the potential costs of mandates before the mandates are enacted.*
- 5. The new system should better integrate the need of state auditors for documentation with the need of local governments to reduce the cost of documentation by relying on more use of their normal data collection systems. The audit process for existing reimbursement claims should be standardized to reduce misunderstanding between the state agencies and local governments and to create a shared sense among both the state agencies and local governments that the auditing process is fair and reasonable.*
- 6. The process should not be a source of frustration and mistrust between state agencies and local governments.*



*7. The process should reduce the cost of processing claims for both the state agencies and local governments.*

These suggested goals are offered in order to facilitate discussion among interested parties about the potential feasible outcomes of a collaborative process and not to limit the deliberations of stakeholders. If a collaborative process is convened, the stakeholders should identify and agree on their own goals for the process.

#### C. Additional Issues to Consider.

We suggest that the interested parties consider the potential focus for a collaborative process before convening the process. In particular our research surfaced differences regarding whether a collaborative process should first focus on local agency mandate reform before taking up education mandate reform. Several parties had strong beliefs about which approach to take. On one hand, including education mandate reform is likely to make the process more complicated because many of the issues are different for education reform and local agency reform, and stakeholders from each area would have to take the time to become informed about the other's issues. In addition the Department of Finance is a proponent of focusing first on local agency reform, and all stakeholders agree the Department must participate if a collaborative process is convened. On the other hand, representatives of education strongly believe they deserve attention as much as local agencies do, and education mandate claims represent approximately half of the total cost of mandates. It is possible education interests would oppose recommendations from the collaborative process if their concerns are not addressed by these recommendations, and this could be a significant problem for legislative consideration of the recommendations.

In addition, interested parties may want to consider the issues focus for the collaborative process. In a previous section we summarized several groups of ideas for reform. Any of

these or some other group of ideas could provide a start for deliberations. The Department of Finance strongly believes that the ideas it has set forth should be the initial focus for discussion, although they agree that all ideas should be considered.

We suggest that the process address both education and local agency mandates. Although this may make the process more complex, two subcommittees could be organized to focus on the respective areas and the recommendations brought back to the full group. There is a risk in taking mandate reform serially that the result would be two different processes existing side by side, at least for an interim period, that may be more complex and costly for the state to administer.

We also suggest that the collaboration take as a starting point for discussion the ideas of the Department of Finance. By all accounts the Department is an essential participant and they feel very strongly that the process is only worth convening if it deals with major changes to the current system. To illustrate the degree of change contemplated, the Director of Finance offered the ideas relating to negotiated reimbursement rates for local agency mandates that we summarized above. In addition we believe that the goals for outcomes that we have suggested above can be realized by starting with these ideas of the Department of Finance and then expanding to look at additional ideas.

Lastly, the focus of the interviews and of this assessment is entirely on the mandates process itself and not on the substantive content of any particular mandate. We believe that the reform discussions can and should be conducted without reference to the particular merits of individual mandates. These are policy questions for the Legislature to decide. Similarly, it is not necessary or advisable to bring into the discussions about reforming the mandates process itself the state agencies with expertise in substantive mandate areas (with the possible exception of the Department of Education since the funding of local education requires such a unique state role) or the constituency groups that have championed particular mandates in the legislative process. To do so would require an altogether different type of process from the one under discussion here.

#### **D. Convening and Organizing a Collaborative Process.**

Completion of this assessment was the first step in a collaborative process to develop recommendations for fundamental reform of the state mandates system. The second step is convening and organizing the process.

We suggest that the Commission on State Mandates seek the assistance of the Legislature as co-convenor and sponsor of the collaborative process. It could do this by requesting special funding to convene a facilitated process involving major state and local interests for the purpose of making recommendations to the Legislature concerning fundamental reform of the state mandates system, by a date certain that allows sufficient time in 2007 for the Legislature to deliberate on the recommendations and enact them into law.

We suggest that Commission staff be assigned the task of selecting a neutral facilitator to guide and manage the collaborative process. The Commission and facilitator should work with interested parties to identify stakeholders for the process. Stakeholders should include the Department of Finance, the State Controller's Office, Department of Education, several representatives of local agencies to reasonably reflect the diversity of interests within that sector, and representatives to reflect the diversity of the educational sector. Stakeholders from local agencies and from education should guide the selection of their representatives and provide for whatever assistance they may require from their respective constituencies. The Commission on State Mandates plays a special role as convener of the process, facilitating its creation and overseeing its administration. The Commission and its staff also have a direct interest in the content of proposed reforms. Often when an agency convenes a collaborative process, it must decide on enacting the resulting recommendations and does not participate as a stakeholder. In this case the issue under consideration is a process to be improved, rather than a policy to be enacted. It is possible that the deliberations will be enhanced if a representative of the Commission participates as a stakeholder. Commission staff will certainly need to participate as a technical resource to the stakeholders.

The Legislature is a co-convener and sponsor of the process and a key institution in implementing its recommendations. Assembly Member Laird and perhaps others will assist in launching the process, and it is expected that staff members of the Legislature will attend to monitor developments closely. As noted below, the group itself should also organize regular briefings for the Legislature, and the LAO will be involved as a technical resource.

Once stakeholders are identified and representatives selected they should work with the facilitator to agree on ground rules. The ground rules should include provisions to ensure that: all are heard and respected; stakeholders will attempt to address the interests of others as well as their own interests; information will be freely shared among stakeholders; and norms of civility will prevail. The ground rules should also include clarity regarding the rules by which decisions will be made by the group and the protocols that all stakeholders will use to keep their constituents, boards or agencies informed about the process. The stakeholders should also work with the neutral facilitator to agree on the design and organization of the process. We suggest that it may be useful to include in this organization at least two subcommittees, one to focus on reforms for education mandates and one to focus on reform for local agency mandates. We also suggest that it may be useful to include in the organization a subcommittee delegated to work with the neutral facilitator on administrative matters of the process.

This organizational step in the collaborative process should also provide for whatever technical information needs the group may require. As noted above, Commission staff and the LAO staff can provide important information. If there are any data of disputed accuracy, a way needs to be structured to work within the limits of the data that is available and agreed upon. If that is not possible, then a form of data mediation among technical experts should be attempted to sort out the issues that divide the experts to see if a consensus can be reached on technical issues sufficient to give the process the information it needs to work with.

Since the end product of the process is a series of recommendations for the Legislature, a cross-section of stakeholder leadership should be selected as a communications subcommittee to maintain regular contact with key legislative members and staff to provide regular briefings in a transparent manner with participation by all the major interests. Although legislative staff are expected to attend the meetings, the stakeholders themselves should also provide their own briefings as a group at milestone points during the process.

One last organizational element would be to establish a rule about contact with the media, especially in light of the fact that in recent years, the mandates issue has generated press coverage that has had some polarizing effects, in the view of some interviewees.

The third step in the collaborative process is joint fact finding as the substantive meetings get underway. During this phase the stakeholders should inform one another about their interests that need to be met with reforms. Stakeholders should also develop a shared understanding about the facts as they relate to the mandates process and the functioning of that process. At this point, the group's technical resource staff will be of critical importance. All information should be accessible and fully shared among stakeholders. Finally, based on a shared understanding of facts, the group should refine the goals and issues that negotiations should address in the next step.

The fourth step in a collaborative process is deliberation and negotiation, the principal activity taking up most of the time of the process. This step should start with a review of the underlying interests of all stakeholders as the basis for creating options for mutual gains. It is difficult to create such options unless there is full understanding among them of each other's interests for reform. We suggest that the group create criteria to be used to evaluate options for mutual gain.

At this point, the process can proceed in a couple of directions. The group can work either with a single text or straw proposal, like the ideas offered by the Department of Finance, or it can immediately try to generate multiple options for consideration. In either

case, progress is made by comparing proposals to the criteria in order to measure their ability to meet the interests of the stakeholders. The group keeps negotiating refinements to get to the point of maximum agreement through considering potential for trade-offs, linkages of proposals, contingencies among proposals, and packaging of several proposals to help reach agreement on specific reform. As draft proposals are reviewed stakeholders should consult regularly with their constituencies and then obtain their ratification for the final recommendations.

The deliberation and negotiation step should include agreements about how to implement the recommendations, how to monitor progress in implementation and in changing circumstances that may affect implementation, and how regular consultation about changed circumstances will occur. The implementation agreements should include any assurances among stakeholders about their respective responsibilities as it relates to implementation. In this regard, for example, the agreement should specify responsibilities for informing the Legislature about the recommendations and advocating for their enactment.

Implementation is the final step. In this step the stakeholders work cooperatively to take action to see the recommendations carried out. They regularly consult with each other about the status of implementation. When changed circumstances arise, they work together to address the new conditions, including returning to negotiation in the event new conditions require revisiting the original recommendations. If questions arise about whether assurances are being met, they consult with each other about the questions and seek to work out differences.

These steps in convening and organizing a collaborative process are consistent with best practices in the field. However, each context is unique and stakeholders should take the lead in jointly deciding on how they will proceed. In the end the success of collaborative processes depends upon both following good practices for fact finding, negotiation, and implementation and assuring that the stakeholders themselves are in control of those steps.

## **LIST OF ATTACHMENTS**

<b>Attachment 1</b>	<b>List of Organizations Represented in Interviews</b>
<b>Attachment 2</b>	<b>Outline of Mandate Reimbursement Process (Prepared by Staff of Commission on State Mandates)</b>
<b>Attachment 3</b>	<b>CCP Protocol of Interview Questions</b>
<b>Attachment 4</b>	<b>Map of Issues Relating to Mandates Process</b>

## **Attachment 1 – List of Organizations and Agencies Interviewed**

### Commission on State Mandates

Present and Former Members (2)

### Legislature

Office of Speaker of the Assembly  
Office of Senate President pro Tempore  
Assembly Republican Fiscal Staff  
Assembly Budget Committee Majority Staff  
Senate Republican Fiscal Staff  
Senate Local Government Committee  
Legislative Analyst's Office

### Department of Finance

Office of the Director  
Education Systems Unit  
Corrections, General Government Unit

### State Controller's Office

Division of Accounting & Reporting  
Division of Audits

### California Department of Education

Fiscal and Administrative Services Division

### Governor's Office

Office of the Secretary of Education  
Office of Legislative Secretary

### Local Government

California State Association of Counties  
League of California Cities  
SB 90 Service (MAXIMUS)  
Alameda County  
El Dorado County  
Los Angeles County  
Newport Beach  
Sacramento County  
Santa Clara County  
San Bernardino County  
Regional Council of Rural Counties  
Urban Counties Caucus  
Education Mandated Cost Network (School Services of California)  
SixTen and Associates  
Anaheim City School District  
California Federation of Teachers



## **Attachment 2 – Outline of State Mandate Claims Process (Prepared by Staff of the Commission on State Mandates)**

### **MANDATE REIMBURSEMENT PROCESS**

#### **I. CREATION OF THE MANDATE**

##### **A. LEGISLATIVE PROCESS**

1. Legislative Counsel Digest. (Gov. Code, §§ 17575, 17578, 17579.)  
(Notice of possible state mandated costs)
2. Appropriations Committees.
  - a. Department of Finance (DOF) Fiscal Analysis on first fiscal year costs. (Gov. Code, §§ 17576, 17577.)
3. Floor Reports include fiscal impact analysis.
4. Governor signs or vetoes.

##### **B. EXECUTIVE ORDERS – REGULATIONS, ETC.**

1. Definition of executive order is very broad. (Gov. Code, § 17516.)
2. Executive Branch Agencies have rulemaking authority.
3. Office of Administrative Law.
  - a. Finding of costs to local governments.
4. DOF reviews regulatory package and approves STD 399, state/local fiscal impact of adopted regulations.

#### **II. TEST CLAIM PROCESS**

##### **A. STATUTORY PROVISIONS**

1. One-year statute of limitations for filing test claim. (Gov. Code, § 17551.)
2. Test claim must exceed \$1,000 increased costs mandated by the state. (Gov. Code, § 17564 subd. (a).)
3. Commission on State Mandates (CSM) determines test claim (Gov. Code § 17551) [adopts statewide cost estimate in 12-18 months from filing date].
4. Successful test claimant proposes Parameters and Guidelines (Ps&Gs) – for reimbursement. (§ 17557); alternatively, CSM staff may prepare Ps&Gs, based on alternative process. (Cal. Code Regs, tit. 2, § 1183.12.)
5. CSM adopts Ps&Gs and may amend on request of party. (Gov. Code, § 17557.)
6. In adopting Ps&Gs, the commission may adopt a reasonable reimbursement methodology. “Reasonable reimbursement methodology” (RRM) is a

formula for reimbursing local agency and school district costs to implement the mandate that meet the following conditions:

- The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost efficient manner.
- For 50 percent or more of eligible claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.
- Whenever possible, a RRM shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when claimants are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a RRM may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding ten years.

State agencies, including, but not limited to the Department of Finance and the State Controller's Office, claimants, and interested parties may propose RRM's. (Gov. Code, §§ 17557 and 17518.5.)

7. State Controller (SCO) issues claiming instructions. (Gov. Code, § 17558, subd. (b).)
8. Local governments file reimbursement claims with SCO. Reimbursement claim must exceed \$1,000/fiscal year. (Gov. Code, § 17564, subd. (a).)
9. SCO may begin auditing reimbursement claims. (Gov. Code, §17558.5.)
10. CSM adopts statewide cost estimate. (Gov. Code, §17553, subd. (a)(2).)
11. CSM reports statewide cost estimates for approved mandates to Legislature (Gov. Code, §§ 17600, 17612, subd. (a).)
12. CSM reports annually to the Legislature on the number of claims it denied during the preceding calendar year, and the basis on which the particular claims were denied. (Gov. Code, § 17601.)
13. LAO reviews CSM reports and recommends to the Legislature whether to repeal, modify, suspend, or fund new mandates. (Gov. Code, § 17562, subd. (c)).)
14. Legislature enacts annual Budget Act (appropriates or suspends mandated programs). introduces and enacts annual claims bill. (Art. XIII B, § 6, Gov. Code, §§ 17581 and 17581.5.)
15. SCO pays claims when funds appropriated.
16. Three-year SOL for local government to appeal SCO reduction to CSM, if claim reduced. (Cal.Code. Regs, tit. 2, § 1185.)
17. Three-year SOL to challenge CSM decisions in court.

### **III. ONGOING FUNDING AND MANAGEMENT OF MANDATED COSTS**

#### **A. LEGISLATURE'S AUTHORITY**

1. Repeal, modify, or fund the mandate (Legislative Analyst Reports to Legislature on new statewide cost estimates and unfunded mandates,. (Gov. Code, §§ 17562, subds. (c), (d), (e)(2), 17570.)
2. Fund the mandate: pay prior year costs and appropriate funds for annual costs. (Art. XIII B, § 6 and Gov. Code, § 17612.)
  - Local Agency (art. XIII B, § 6, subd.(b) – Proposition 1A)  
Beginning July 1, 2005, pay full amount or immediately suspend program for that fiscal year. This requirement does not apply to education mandates or mandates concerning employee rights or benefits.
3. Suspend the mandate in Budget Act. – local agencies; school districts. (Gov. Code, § 17581, 17581.5.)
4. Direct CSM to reconsider mandate or amend Ps&Gs. (Gov. Code, § 17612, budget trailer bills.)
5. Assembly and Senate Committees on Local Government may hold a joint hearing each year on specified topics. (Gov. Code § 17562, subd. (f).)

#### **B. LOCAL GOVERNMENTS' AUTHORITY**

1. Submit proposals to Legislature recommending the elimination or modification of a state-mandated local program (§ 17562, subd. (e)(1)).
2. File new test claims on new programs or higher levels of service. (Gov. Code, § 17514.)
3. File incorrect reduction claims challenging SCO reductions. (3-year statute of limitations from date of remittance advice). (Gov. Code, § 17551.)
4. Request amendment of parameters and guidelines based on program modifications, to clarify after audits. (Gov. Code, § 17557, subd. (d).)
5. Request CSM review of claiming instructions. (Gov. Code, § 17571.)
6. Challenge decisions of CSM, SCO, DOF. (Gov. Code, § 17559, 17612.)

#### **C. STATE CONTROLLER DUTIES AND AUTHORITY**

1. Audit reimbursement claims and reduce payments (Gov. Code, § 17558.5.).
2. Propose amendments to parameters and guidelines based on program modifications, audits, etc. (Gov. Code, § 17557, subd. (d).)
3. File AB 3000 report by Jan. 1 each year. (Gov. Code, § 17562, subd. (b).)

4. Reimburse local governments for all costs mandated by the state and interest. (Gov. Code, § 17561, 17561.5, 17561.6); if necessary, reimburse local governments for prorated claims (Gov. Code, § 17567).
5. File deficiency report each year (Gov. Code, § 17567).
6. File comments on all pending test claims, parameters and guidelines, and statewide cost estimates, and draft staff analyses prepared by CSM staff.
7. Challenge decisions of CSM, DOF (Gov. Code, §§ 17559, 17612.)

**D. DEPARTMENT OF FINANCE DUTIES AND AUTHORITY**

1. Prepare fiscal committee analyses and EBRs on legislation.
2. Approve STD 399 for rulemaking.
3. File comments on all pending test claims, parameters and guidelines, and statewide cost estimates, and draft staff analyses prepared by CSM staff.
4. Propose amendments to parameters and guidelines. (Gov. Code, §17557, subd. (d).)
5. File report to Legislature on cost savings. (Gov. Code, § 17562, subd. (e)(3).)
6. Prepare Governor's Budget – propose appropriations for mandate reimbursement in January and May Revision.
7. Challenge decisions of CSM, SCO. (Gov. Code, § 17559.)

**Attachment 3 – Interview Questions**

**Assessment of Mandate Reform**

**Protocol for Interview of Stakeholders**

**February 2006**

**I. Introduction**

As you know, there has been much discussion about *mandate reform* but so far little consensus. The mandate reimbursement process, which is essentially the same process that was established twenty years ago, does not timely inform policymakers of the state's liability for mandated costs, nor does it timely reimburse local governments and school districts for the costs they incur. The Commission on State Mandates is seeking to streamline and reform the existing process for determining and reimbursing mandates. The Center for Collaborative Policy is carrying out an assessment on behalf of the Commission to determine the issues that should be addressed in reforms, the opportunities for agreement on reforms, and the potential usefulness of a collaborative process to develop recommendations for reforms. The purpose of this interview is to obtain your views on the mandate process, the issues that should be addressed by reforms, other stakeholders who should be included, and the usefulness of a collaborative process to develop recommendations. We will keep your replies confidential. No one will see them except Center professionals who are working on this assessment. They will only be reported as part of an aggregate of responses, with no attribution to any specific individual.

**II. About the interviewee and context**

1. What is your role within your organization as it relates to the state's mandate process?
2. What is the current focus of your organization regarding the state's mandate process?
3. What are the key issues for your organization as it relates to the existing state mandate process?

**III. About goals, issues, and interests**

4. What are the goals your organization would like to see achieved as part of mandate reform?
5. How would your organization benefit from achieving each of these goals?
6. What are the central issues that must be addressed in order for each of these goals to be effectively achieved in mandate reforms?

7. What issues are of greater and lesser importance?
8. Are any of the issues related to mandate reform linked together so that they should be discussed together?

### **III. About other stakeholders**

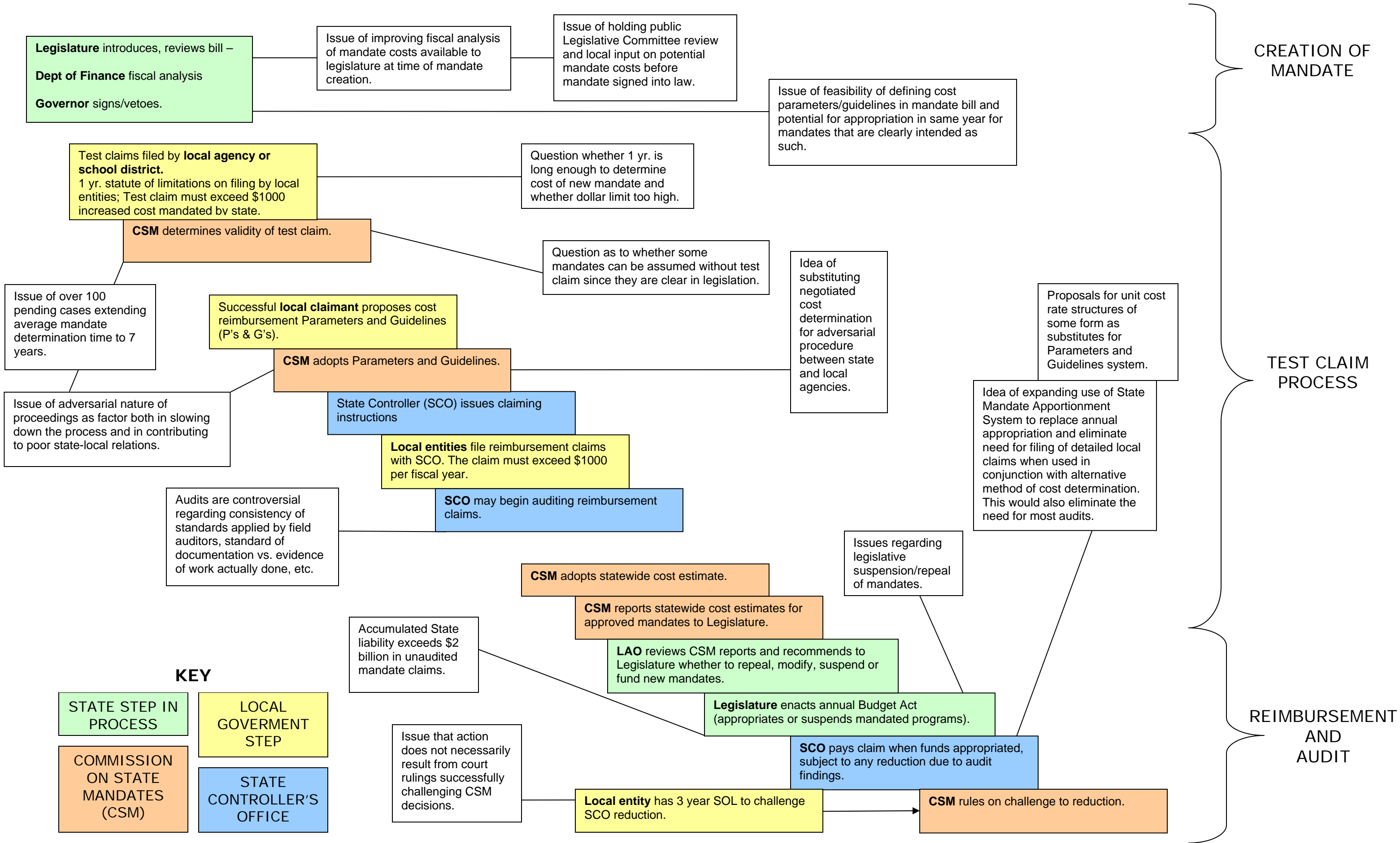
9. Who are the other major stakeholders who should be involved in a process to develop recommendations for mandate reform?
10. Which of these stakeholders should directly participate in a decision making process, along with other stakeholders, to decide on recommendations and help implement decisions, and which need to be consulted and kept informed but not necessarily decision making participants?
11. Can you tell me the key areas where you agree and/or disagree on mandate reform issues with any of these stakeholders?
12. Do you have any suggestions for how stakeholders not participating directly in a decision making process to formulate recommendations should be involved?

### **IV. About the process**

13. Would a collaborative process to develop recommendations for mandate reform be worthwhile? Why or why not?
14. If a collaborative process were convened to develop recommendations, would your organization be willing to participate?
15. Are there any conditions related to such a collaborative process itself that would be important to address in order for you to participate?
16. What are the types of information that should be available for the participants in a collaborative process to do their work?
17. Are you aware of any other activities related to mandate reform, such as legislation or litigation, which might affect a collaborative process?
18. If a collaborative process developed reform recommendations that your organization agrees with, would you be willing to help implement those reforms?

### **V. Conclusion**

19. Is there anything else we should be aware of in completing this assessment?



ISSUES MAP FOR MANDATE REIMBURSEMENT PROCESS